

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JEREMY LEVIN AND DR. LUCILLE LEVIN, :

Plaintiffs,

v.

BANK OF NEW YORK, *et al.*,

Defendants.

-----x
THE BANK OF NEW YORK MELLON, *et al.*

Third-Party Plaintiffs,

v.

ESTATE OF MICHAEL HEISER, *et al.*,

Third-Party Defendants.

: Case No. 09-Civ-5900 (RPP)

:
: LOCAL RULE 56.1 SEPARATE STATEMENT
: OF DISPUTED FACTS IN
: SUPPORT OF THE ESTATE OF MICHAEL
: HEISER, ET AL'S

:
x OPPOSITION TO THE MOTION FOR
: PARTIAL SUMMARY JUDGMENT ON
: CLAIMS FOR TURNOVER ORDER
: PHASE ONE ASSETS PURSUANT TO
: FED. R. CIV. P. 13, 56, AND 69, CPLR
: SECTIONS 5225(B), 5232, AND 5234(B),
: ORDERS DATED JANUARY 11, 2010 AND
: JULY 2, 2010

:

:

x

Pursuant to Local Rule 56.1, the Estate of Michael Heiser, et al. (the "Heisers") submit the following statement of undisputed material facts, together with reference to supporting evidence, in support of the Estate of Michael Heisers et al.'s Response in Opposition to the Motion for Partial Summary Judgment on Claims for Turnover of Phase One Assets Pursuant to Fed. R. Civ. P. 13, 56, and 69, CPLR Sections 5225(b), 5232 and Order Dated January 11, 2010 and Order Dated July 2, 2010.

DISPUTED FACT ASSERTED BY THE LEVINS	STATEMENT CONTROVERTING	SUPPORTING EVIDENCE
10. The following are agencies and instrumentalities of Iran: 	10. [REDACTED] [REDACTED] is not an agency or instrumentality of Iran under 28 U.S.C. § 1603(b) because [REDACTED] [REDACTED] is a wholly owned subsidiary of [REDACTED].	See Ex. 9 to Misler Decl.; 28 U.S.C. § 1603(b) (defining an agency or instrumentality of a foreign state); <i>Dole Food Co. v. Patrickson</i> , 538 U.S. 468, 474 (2003); <i>Ocean Line Holdings, Ltd. v. China Nat'l</i>

		Chartering Corp., 578 F. Supp. 2d 621, 625 (S.D.N.Y. 2008). Clawson Aff. ¶¶ 29, 30, 31, 32, 33 – 34. See also www.petropars.com .
	[REDACTED] are not agencies or instrumentalities of Iran because Iran does not own a direct interest in any of these entities.	
24. The Heiser Judgment Creditors filed answers to the third party complaints and counterclaimed against the New York Banks on June 15, 2010.	24. The Heisers counterclaimed against the New York Banks (as defined by the Levins), however, the Heisers filed an amended answer retracting its counterclaims against Citibank, N.A. and Societe Generale.	Amended Answer of the Estate of Michael Heiser, et al. (Docket No. 212).
37. [REDACTED] is itself an agency or instrumentality of Iran.	37. [REDACTED] is not an agency or instrumentality of Iran under the definition contained in 28 U.S.C. § 1603(b) because it is a wholly owned subsidiary of Islamic Republic of Iran Shipping Lines.	28 U.S.C. § 1603(b) (defining an agency or instrumentality of a foreign state); <i>Dole Food Co. v. Patrickson</i> , 538 U.S. 468, 474 (2003); <i>Ocean Line Holdings, Ltd. v. China Nat'l Chartering Corp.</i> , 578 F. Supp. 2d 621, 625 (S.D.N.Y. 2008). Clawson Aff. ¶ 32.
50. [REDACTED] is an agency or instrumentality of Iran.	50. [REDACTED] is not an agency or instrumentality of Iran under 28 U.S.C. § 1603(b) because [REDACTED] is a wholly owned subsidiary of [REDACTED].	See Ex. 9 to Misler Decl.; 28 U.S.C. § 1603(b) (defining an agency or instrumentality of a foreign state); <i>Dole Food Co. v. Patrickson</i> , 538 U.S. 468, 474 (2003); <i>Ocean Line Holdings, Ltd. v. China Nat'l Chartering Corp.</i> , 578 F. Supp. 2d 621, 625 (S.D.N.Y. 2008). Clawson Aff. ¶ 29.

Dated: New York, New York
September 13, 2010

/s/ Barbara L. Seniawski
Cary B. Samowitz
Barbara L. Seniawski
DLA Piper LLP (US)
1251 Avenue of the Americas, 27th Floor
New York, New York 10020-1104
Telephone: 212-335-4659
Facsimile: 212-884-8459
cary.samowitz@dlapiper.com

and

Richard M. Kremen (Md. Fed. Bar No. 00532)
Dale K. Cathell (Md. Fed. Bar No. 26924)
David B. Misler (Md. Fed. Bar No. 28828)
DLA PIPER LLP (US)
6225 Smith Ave.
Baltimore, MD 21209
Telephone: 410-580-3000
Facsimile: 410-580-3001
Richard.kremen@dlapiper.com
Dale.cathell@dlapiper.com
David.misler@dlapiper.com

Attorneys for Third-Party Defendants Estate of Michael Heiser, et al.